81-2412
NO.

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In the Supreme Court of the United States

OCTOBER TERM, 1981

GULF OIL CORPORATION AND TRAVELERS INSURANCE COMPANY,

Petitioners,

VERSUS

DORIS JEAN FISHER,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I.

How may a plaintiff identify her claim as maritime under Rule 9(h) of the Federal Rules of Civil Procedure, so as to deprive the defendants of trial by jury?

II.

Once a plaintiff in a maritime case, concurrently within the diversity jurisdiction of the federal courts, has consented to trial by jury, how may she revoke her consent so as to deprive the defendants of trial by jury?

LIST OF PARTIES

Pursuant to Rule 21.1(b) of the Supreme Court of the United States, counsel for petitioners, Gulf Oil Corporation and Travelers Insurance Company, certifies that all parties to this proceeding are:

Doris Jean Fisher

Gulf Oil Corporation

Travelers Insurance Company

Willie Danos

TABLE OF CONTENTS

Page

Questions Presented For Review i
List of Parties ii
Table of Contents iii
Table of Authorities iv
Opinions Below 1
Statement of Jurisdictional Grounds 1
Rules Involved 2
Statement of the Case 4
Basis for Federal Jurisdiction in the District Court 6
Reasons for Granting Writ 6
Conclusion 22
Certificate of Service 23
Appendix A—Original Complaint of Plaintiff A-1
Appendix B—Amended and Supplemental Answer of Gulf Oil Corporation and The Travelers Insurance Company A-6
Appendix C—Pre-trial Order of January 17, 1978 ..... A-10
Appendix D—District Court's Minute Entry of April 10, 1978 setting case for jury trial A-27
Appendix E—DistrictCourt's Judgment dated April 10, 1980 ..... A-29
Appendix F—Fifth Circuit's Decision A-31

TABLE OF AUTHORITIES

Cases	Page
Anderson v. American Oil Co., 60 F.R.D. 676 (S.D. Ga. 1973)	17
Banks v. Hanover S.S. Corp., 43 F.R.D. 374 (D. Md. 1967)	12, 16, 17, 20
Byrd v. Blue Ridge Rural Elec. Co-op., Inc., 356 U.S. 525, 78 S.Ct. 893, 2 L.Ed.2d 953, (1958)	7
Case v. Abrams, 352 F.2d 193 (10th Cir. 1965)	20
Fitzgerald v. United States Lines, 374 U.S. 16, 83 S.Ct. 1646, 10 L.Ed.2d 720 (1963)	6
Gilmore v. Witschorek, 411 F. Supp. 491 (E.D. Ill. 1976)	12
Harrison v. Flota Mercante Grancolombiana, S.A., 577 F.2d 968 (5th Cir. 1978)	7
Johnson v. Penrod Drilling Co., 469 F.2d 897 (5th Cir. 1972)	15
Kerr v. Compagnie de Ultramar, 250 F.2d 860 (2nd Cir. 1958)	10
Mazzella v. Pan Oceanica A/S, 232 F. Supp. 29 (S.D. N.Y. 1964)	10
Romero v. Bethlehem Steel Corp., 515 F.2d 1249 (5th Cir. 1975)	15, 16, 21
Waring v. Clarke, 5 How. 441, 12 L.Ed. 226 (U.S. 1847)	6
RULES	
Federal Rules of Civil Procedure	
Rule 8(a)	11
Rule 9(h)	2, 4, 8, 9, 10, 11, 14
Rule 15	8
Rule 38	2, 8
Rule 39	3, 8, 17
OTHER	
Advisory Committee's Note to Proposed Federal Rules of Civil Procedure 9(h), 39 F.R.D. 69 (1966)	14
3 Moore, *Federal Practice* ¶16.20 (2d Ed. 1980)	20
3 Moore, *Federal Practice* 16-42 (2d Ed. 1980)	20

OPINIONS BELOW

The opinion of the United States Court of Appeals is reported at 671 F.2d 173 (5th Cir. 1982) and is reproduced as Appendix F.

STATEMENT OF JURISDICTIONAL GROUNDS

The opinion of the United States Court of Appeals for the Fifth Circuit was entered on March 31, 1982.

This court has jurisdiction under 28 U.S.C.A. § 1254(1).

RULES INVOLVED

This case involves provisions of Rules 9, 38 and 39 of the Federal Rules of Civil Procedure which read in pertinent part:

Rule 9(h):

> A pleading or count setting forth a claim for relief within the admiralty and maritime jurisdiction that is also within the jurisdiction of the district court on some other ground may contain a statement identifying the claim as an admiralty or maritime claim for the purposes of Rules 14(c), 38(e), 82, and the Supplemental Rules for Certain Admiralty and Maritime Claims. If the claim is cognizable only in admiralty it is an admiralty or maritime claim for those purposes whether so identified or not. The amendment of a pleading to add or withdraw an identifying statement is governed by the principles of rule 15. The reference in Title 28, U.S.C. §1292(a) (3), to admiralty cases shall be construed to mean admiralty and maritime claims within the meaning of this subdivision.

Rule 38(b):

Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be indorsed upon a pleading of the party.

Rule 39:

When trial by jury has been demanded as provided in Rules 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the United States.

STATEMENT OF THE CASE

Gulf Oil Corporation operated an oilfield in the marshes of southeastern Louisiana. The oilfield was interlaced with navigable waterways. Gulf built a jetty extending from the bank of one of these waterways, into the waterway itself. A pleasure boat, owned and operated by Willie Danos, and in which Doris Jean Fisher, the respondent, was a passenger, struck the jetty on November 11, 1974. Mrs. Fisher was injured.

On November 10, 1975, Mrs. Fisher, a citizen of Louisiana, filed her complaint against Mr. Danos, a citizen of Louisiana, and against Gulf and its insurer, the Travelers Insurance Company, neither of whom was a citizen of Louisiana. The complaint appears as Appendix A to this petition. The only jurisdictional allegation in the plaintiff's complaint was:

V.

> This is a case of admiralty and maritime jurisdiction, as will hereinafter more fully appear, within the meaning of Rule 9(h).

The plaintiff did not demand trial by jury in her complaint.

Later, the plaintiff settled with the non-diverse

defendant, Mr. Danos, and voluntarily dismissed him from the action.

With diversity of citizenship now complete, Gulf and Travelers, with leave of court, amended their answer to allege diversity of citizenship as an additional grounds for federal jurisdiction and demanded trial by jury. The amended answer of Gulf and Travelers, filed by leave of court granted December 3, 1976, is attached as Appendix B.

Counsel for the plaintiff joined in and signed the pre-trial order of January 17, 1978, attached as Appendix C, expressly designating this case as one to be tried by jury. The plaintiff's attorney acquiesced and the district court's minute entry of April 7, 1978, attached as Appendix D, set the case for trial by jury. At no time did the plaintiff ever seek to amend her complaint to identify her *claim* as an admiralty and maritime *claim*.

The case proceeded to trial by jury on April 3, 1980. The jury found for the defendants. The court entered judgment on the verdict on April 10, 1980. The district court's judgment is attached as Appendix E.

The plaintiff appealed to the United States Court of Appeals for the Fifth Circuit. By decision of March 31, 1982, the Fifth Circuit reversed the district court's judgment and remanded to the district court for trial by the judge alone, without a jury. The Fifth Circuit's decision is

attached as Appendix F.

BASIS FOR FEDERAL JURISDICTION IN THE DISTRICT COURT

When the complaint was first filed, the only basis of jurisdiction in the district court was maritime jurisdiction. Once the plaintiff dismissed her demands against the non-diverse defendant, both maritime and diversity jurisdiction existed.

REASONS FOR GRANTING THE WRIT

The Fifth Circuit allowed the plaintiff to deprive the defendants of trial by jury, without following the procedures expressly established by the Federal Rules of Civil Procedure. The Fifth Circuit's opinion, in effect, reads out of the Federal Rules provisions designed to safeguard a litigant's right to trial by jury.

The Seventh Amendment to the Constitution of the United States does not require jury trials in admiralty cases. *Waring v. Clarke*, 5 How. 441, 12 L.Ed. 226 (U.S. 1847). Nor does the Seventh Amendment forbid jury trials in admiralty cases. *Fitzgerald v. United States Lines*, 374

U.S. 16, 83 S.Ct. 1646, 10 L.Ed.2d 720 (1963).

In some admiralty cases, a "plaintiff may preclude the defendant from invoking the trial to jury which may otherwise exist." *Harrison v. Flota Mercante Grancolombiana, S.A.*, 577 F.2d 968, 986 (5th Cir. 1978). But there is a "federal policy favoring jury decisions of disputed fact questions", *Byrd v. Blue Ridge Rural Elec. Co-op., Inc.*, 356 U.S. 525, 538-39, 78 S.Ct. 893, 2 L.Ed.2d 953, 963 (1958), and the Federal Rules of Civil Procedure describe when and how a plaintiff may deprive a defendant of his hallowed rights to jury trial.

> A pleading or count setting forth a claim for relief within the admiralty and maritime jurisdiction that is also within the jurisdiction of the district court on some other ground may contain a statement identifying the claim as an admiralty or maritime claim for the purposes of Rules 14(c), 38(e), 82, and the Supplemental Rules for Certain Admiralty and Maritime Claims. If the claim is cognizable only in admiralty it is an admiralty or maritime claim for those purposes whether so identified or not. The amendment of a pleading to add or withdraw an identifying statement is governed by the principles of rule 15. The reference in Title 28, U.S.C. § 1292(3), to ad-

> miralty cases shall be construed to mean admiralty and maritime claims within the meaning of this subdivision.

Fed.R.Civ.P. 9(h).

> Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be indorsed upon a pleading of the party.

Fed.R.Civ.P. 38(b).

> When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues

> does not exist under the Constitution or statutes of the United States.

Fed.R.Civ.P. 39(a).

This, then, is the procedure for depriving a defendant of a jury trial:

1. The plaintiff files an action which is "within the admiralty and maritime jurisdiction" of the federal district court, and "also within the jurisdiction of the district court on some other ground..." Fed.R.Civ.P. 9(h).

2. The plaintiff identifies the claim as an admiralty or maritime claim. Fed.R.Civ.P. 9(h).

3. If the plaintiff has not so identified his claim in his original pleading, he may do so by amendment. Fed.R.Civ.P. 9(h) & 15.

4. If the defendant has already demanded trial by jury, Fed.R.Civ.P. 38(b), the plaintiff must obtain either the defendant's written stipulation, or an order of court, for trial by the judge alone. Fed.R.Civ.P. 39(a).

The Fifth Circuit allowed frustration of the defendant's right to trial by jury, even though the plaintiff failed to follow this procedure.

This case did not commence as a Rule 9(h) case. The accident in suit may have been within the admiralty and maritime jurisdiction, but that was the only basis of jurisdiciton, because there was not complete diversity when the suit was filed. Rule 9(h) applies only to cases which are within the admiralty and maritime jurisdiction, and "also within the jurisdiction of the district court on some other ground". Fed.R.Civ.P. 9(h). It was only when the plaintiff voluntarily dismissed the non-diverse defendant, Mr. Danos, that this case became a 9(h) case, because it was only then that there was admiralty and maritime jurisdiction, and also "some other ground", diversity. It was not until the non-diverse defendant was dismissed and diversity jurisdiction attached, *Kerr v. Compagnie de Ultramar,* 250 F.2d 860 (2d Cir. 1958); *Mazzella v. Pan Oceanica A/S,* 232 F.Supp. 29 (S.D. N.Y. 1964), that there could even be any consideration of Rule 9(h).

Once Rule 9(h) became applicable with the attachment of diversity jurisdiction, then and only then could the plaintiff make "a statement identifying the claim as an admiralty or maritime claim..." Fed.R.Civ.P. 9(h). The plaintiff's right to a non-jury trial in a 9(h) case is not absolute, but is conditioned upon the plaintiff making a "statement identifying the claim as an admiralty or maritime claim". It is only when the plaintiff has identified her claim as "an admiralty or maritime claim within the meaning of Rule 9(h)" that Rule 38(e) assures her a non-jury trial.

But how does the plaintiff make "a statement identi-

fying the claim as an admiralty or maritime claim"? Every complaint must express the jurisdictional grounds upon which it is based. Fed.R.Civ.P. 8(a). The original complaint alleged only:

V.

> This is a case of admiralty and maritime jurisdiciton, as will hereinafter more fully appear, within the meaning of Rule 9(h).

For the plaintiff to allege that her cause of action is within the admiralty or maritime jurisdiction does nothing more than meet the requirements of Rule 8(a). It demonstrates that Rule 9(h) is inapplicable because there is no other type of jurisdiction. In order to identify the claim as an admiralty or maritime claim, the plaintiff must go beyond the bare allegation of admiralty and maritime jurisdiction. There must exist "some other ground" of federal jurisdiction, and the plaintiff must identify her claim per se as an admiralty or maritime claim.

> An allegation that the claim is within the admiralty and maritime *jurisdiction* does not *automatically* make it an admiralty and maritime *claim*, within the meaning of Rule 9(h), if the claim is also within the jurisdiction of the district court on some other ground. A statement identifying

> the pleading as an admiralty and maritime claim is necessary.

Banks v. Hanover S.S. Corp., 43 F.R.D. 374, 376-377 (D. Md. 1967). In *Banks v. Hanover S.S. Corp.*, the plaintiff in one of the consolidated cases, *Sebree v. Grace Lines*, alleged in the complaint that the case was within federal diversity jurisdiction and within "the Admiralty and Maritime jurisdiction of the court". 43 F.R.D. at 381. This is almost verbatim what the plaintiff in the instant case alleged in her complaint, where in paragraph V she said, "This is a case of admiralty and maritime jurisdiction, as will hereinafter more fully appear, within the meaning of Rule 9(h)." Simply to allege admiralty or maritime jurisdiction does not identify the *claim* as an admiralty or maritime *claim*.

How must the plaintiff identify his claim as an admiralty or maritime claim? An example appears in *Gilmore v. Witschorek*, 411 F. Supp. 491 (E.D. Ill. 1976). There, the plaintiff alleged in his complaint that:

> This is a case of admiralty in [sic] maritime jurisdiction, as hereinafter more fully appears and is an admiralty and maritime claim within the meaning of Rule 9(h), F.R.C.P.

411 F.Supp. at 496. This was held to be sufficient, because not only does it assert admiralty jurisdiction, as does paragraph V of the plaintiff's complaint in this case, it goes

on to identify the *claim* as an admiralty and maritime claim, which the plaintiff's complaint in this case does not do. It is understandable why the plaintiff's complaint in this case does not identify her claim as an admiralty or maritime claim under Rule 9(h), thereby precluding trial by jury. When her case was filed it simply was not a Rule 9(h) case, because the only grounds for federal jurisdiction was admiralty or maritime. The issue of an identifying statement did not even arise until the plaintiff dropped the non-diverse defendant. No sooner did the plaintiff drop the non-diverse defendant than Gulf and Travelers amended their answer to allege diversity jurisdiction and demand trial by jury. As of the time that Gulf and Travelers amended their answer to allege diversity jurisdiction and demand trial by jury, the plaintiff had done nothing to identify her claim as an admiralty or maritime claim even though it was now, for the first time, a 9(h) case. At this time, the plaintiff was obviously content to have her case tried by jury, and her acquiescence in the trial by jury is more than amply borne out by the fact that her attorney signed the pre-trial order of January 17, 1978 (Appendix C) acquiescing in trial by jury.

Though the plaintiff failed to identify her claim as an admiralty or maritime claim once diversity jurisdiction attached and her case was brought within the purview of Rule 9(h), her failure to identify was not irrevocable.

> The choice made by the pleador in identifying or failing to

> identify his claim as an admiralty or maritime claim is not an irrevocable election.

Advisory Committee's Note to Proposed Fed.R.Civ.P. 9(h), 39 F.R.D. 69, 76 (1966). Rule 9(h) provides a very specific procedure whereby a plaintiff may add a statement identifying a claim as an admiralty or maritime claim when he has failed to do so, or whereby he may withdraw such an identifying statement when he has made one. That method is amendment under Rule 15.

> The amendment of a pleading to add or withdraw an identifying statement is governed by the principles of Rule 15.

Fed.R.Civ.P. 9(h).

Rule 38 permits "any party" to "demand a trial by jury" by serving a demand therefor. Once diversity jurisdiction attached, the defendants in this case demanded trial by jury.

Rule 39(a) provides that once a jury has been demanded, the action "shall be designated upon the docket as a jury action", and all issues shall be tried to a jury unless the parties stipulate otherwise, or unless the court finds that a right to trial by jury does not exist. Fed.R.Civ.P. 39(a).

In *Johnson v. Penrod Drilling Co.*, 469 F.2d 897 (5th Cir. 1972), plaintiffs in a 9(h) case attempted to withdraw a demand for trial by jury, but without complying with Rule 39(a). That is, without the consent of the defendants, and without a finding by the court that a right to trial by jury did not exist. This court ruled that the defendant was entitled to trial by jury, because a demand for trial by jury could be withdrawn only upon compliance with Rule 39(a). The plaintiff in this case did not comply with Rule 39(a), because she did not obtain a stipulation from the defendants that the case may be tried without a jury, and did not seek or obtain an order of court finding that a right of trial by jury did not exist.

Nor did the plaintiff attempt to amend her complaint to add a statement identifying her claim as an admiralty or maritime claim, thereby obviating trial by jury. Addition and withdrawal of identifying statements are "governed by the principles of Rule 15." Fed.R.Civ.P. 9(h). When the plaintiff has included a statement identifying her claim as an admiralty or maritime claim, she may seek leave to amend to withdraw the identifying statement. When the plaintiff has failed to make an identifying statement, she may seek leave to amend to include an identifying statement. But where she does not seek leave to amend, she may not add if she has failed to include, nor may she withdraw if she has included. In *Romero v. Bethlehem Steel Corp.*, 515 F.2d 1249 (5th Cir. 1975), a plaintiff had identified his 9(h) claim as an admiralty or maritime claim. He decided later that he wanted a trial by jury, but he never tried to amend

to withdraw his statement identifying his claim under Rule 9(h) as an admiralty or maritime claim. Because he did not try to amend, the plaintiff was forced to a non-jury trial, and the Fifth Circuit affirmed. Withdrawal and addition of identifying statements are both governed under the principles of Rule 15. The plaintiff in this case never identified her claim as an admiralty or maritime claim, but merely invoked admiralty or maritime jurisdiction, which is not tantamount to the requisite identifying statement. *Banks v. Hanover S.S. Corp., supra.* And yet the plaintiff in this case never amended or sought to amend her complaint to identify her claim as an admiralty or maritime claim. She is therefore without standing to insist upon a non-jury trial.

The obvious counter-argument is that the plaintiff's opposition to the defendants' efforts to obtain trial by jury was tantamount to an attempt to amend and add a statement identifying her claim as an admiralty or maritime claim. It is clear that under *Romero v. Bethlehem Steel Corp.* the plaintiff must actually amend. It does not suffice for the plaintiff to insist in a general way upon a non-jury trial or upon a jury trial, whichever is her preference. She must follow the rules.

But assuming arguendo that the plaintiff's opposition to the defendants' efforts to obtain a jury trial was tantamount to an attempted amendment to add a statement identifying her claim as an admiralty or maritime claim, the district court's action in granting the jury trial was tantamount to refusing the attempted amendment.

Amendments are a matter of discretion with the trial court, and abuse of discretion has not been proved or even argued. Moreover, the plaintiff in this case, if her opposition to the trial by jury be considered an attempt to amend, had no purpose in mind other than to deprive the defendants of trial by jury. When the sole purpose of the amendment by the plaintiff is to deprive the defendants of their right to trial by jury, the trial court is within its discretion to refuse the amendment. *Anderson v. American Oil Co.*, 60 F.R.D. 676 (S.D. Ga. 1973); *Banks v. Hanover S.S. Corp.*, *supra*.

In summary, the plaintiff's right to non-jury trial in a 9(h) case is not absolute. It is contingent upon her making a statement identifying the claim as a maritime claim. The plaintiff never made such an identifying claim. The plaintiff never made such an identifying statement in this case. To the contrary, by joining in the pre-trial order, she acquiesced in and consented to trial by jury. She never sought to amend to add a statement identifying her claim as an admiralty or maritime claim. Thus, she never did what she had to do to perfect her right to non-jury trial.

Rule 39(c) provides:

> In all actions not triable of right by a jury...the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

Rule 39(c) does not spell out exactly how the parties must consent to trial by jury in actions not triable of right by jury. But it is hard to imagine that the consent of the parties to trial by jury could be more clearly expressed than in the pre-trial order signed by the parties and the court on January 17, 1978. Paragraph 4 of that pre-trial order read:

> The substantive law to be applied is Admiralty. There is diversity of citizenship. Trial will be by jury.

Paragraph 15 of that pre-trial order provided:

> This is ~~(is not)~~ a jury case and a jury trial is ~~(is not)~~ applicable to all aspects of the case.

The plaintiff claims that she unilaterally withdrew this consent to jury trial. Her purported withdrawal had to be unilateral, because the defendants and the court maintained throughout that the case was one for trial by jury. Rule 39(c) contains no provision for withdrawal of consent by one party, once both parties have consented to jury trial. Research reveals no reported decision in point, but it is unthinkable that one party could unilaterally withdraw consent mutually given under Rule 39(c) to jury trial. If one party could unilaterally withdraw her consent given under Rule 39(c) to jury trial, then the provisions of Rule 39(c) would be deprived of all meaning. A reasonable construction of Rule 39(c) is that once given, a party's consent to

jury trial may be withdrawn only with the consent of the other parties or, at the very least with leave of court. In this case, neither the defendants nor the court concurred in the plaintiff's unilateral withdrawal of her consent to trial by jury. Her purported withdrawal of consent to trial by jury is, therefore, ineffective.

Assuming arguendo, therefore, that the plaintiff's action is one "not triable of right by a jury", the district court was correct in ordering the case tried by jury because the plaintiff consented to trial by jury under Rule 39(c) and did not effectively withdraw that consent.

The district court's standard pre-trial notice, which is a part of the record of this case, provides in paragraph 19:

> Hereinafter, this Order will control the course of the trial and may not be amended except by consent of the parties and the Court, or by order of the Court to prevent manifest injustice.

Neither leave of court nor consent of the defendants was ever obtained to eliminate the trial by jury to which the plaintiff had earlier consented.

> Unless and until the Court is persuaded to modify its pre-trial order, the parties are bound by their admissions and stipulations

> included in the order, and may not contradict its terms.

3 Moore, *Federal Practice* 16-42 (2d Ed. 1980).

> The pre-trial order supersedes the pleadings and becomes the governing pattern of the lawsuit. The issues having been thus defined, they ought to be adhered to in the absence of some good and sufficient reason which must rest largely within the discretion of the trial court.

Case v. Abrams, 352 F.2d 193, 195-196 (10th Cir. 1965). The defendants are quick to admit that a pre-trial order may be modified, but it may be modified only by the court and not by the unilateral action of counsel for one of the parties. 3 Moore, *Federal Practice* ¶16.20 (2d Ed. 1980). If the plaintiff could unilaterally modify the pre-trial order without the consent of the defendants or leave of court, she could vacillate daily, and neither the defendants nor the court would know until the last minute how the case was to be tried.

Where the plaintiff has consented to trial by jury, the defendant has a right to trial by jury, even in a 9(h) case. Fed.R.Civ.P. 39(c). Where the plaintiff has not identified her claim as an admiralty or maritime claim, as is the case here, the defendants' demand for trial by jury must be honored. *Banks v. Hanover S.S. Corp., supra.* The plaintiff may, of course, seek to add a statement identifying her

claim as an admiralty or maritime claim, when she has not previously included such a statement. But she must amend to do so, and where she does not try to amend, the defendants' prayer for trial by jury will be honored. See *Romero v. Bethlehem Steel Corp., supra.*

Even construing the pleadings in the light most favorable to the plaintiff, and even assuming that she has sought to amend, the court has quite properly refused leave to amend and has not abused its discretion in so doing.

In summary, where the plaintiff has consented to jury trial under Rule 39(c), and has never made a statement identifying her claim as an admiralty or maritime claim under Rule 9(h), the defendants do indeed have a right to jury trial. Obviously, that right exists when the plaintiff does not oppose it. Even when the plaintiff does oppose the defendants' right to jury trial, the plaintiff's opposition is meaningless unless the plaintiff has included a statement identifying her claim as an admiralty or maritime claim in her complaint, or has amended to include such a statement. She has done neither in this case.

Therein lies the Fifth Circuit's error, and therein lies the reason for granting the writ. The Fifth Circuit allowed the plaintiff to frustrate the defendants' right to trial by jury even though the plaintiff had not followed the rules.

This court has never ruled on the issues at hand.

This court has never squarely decided when and how a plaintiff may identify her claim as an admiralty and maritime claim under Rule 9(h), or withdraw her consent to jury trial. The Fifth Circuit's decision allows the plaintiff to do so without regard to the Federal Rules of Civil Procedure. This erroneous abridgement of the important and federally protected right to trial by jury necessitates that this court grant the writ.

CONCLUSION

For the reasons set forth above, respondents Gulf and Travelers respectfully submit that this court should grant this petition for writ of certiorari.

PHILIP E. HENDERSON
CHARLES HANEMANN
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that three copies of this Petition For Writ of Certiorari have been sent to each counsel of record for respondent by depositing same in the United States mail, postage prepaid, this _____ day of June, 1982.

I further certify that all parties required to be served have been served.

Robert McComiskey
407 Decatur Street
New Orleans, LA 70130

Darryl W. Bubrig, Sr.
Highway 23 S.
Buras, LA 70041

PHILIP E. HENDERSON

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DORIS JEAN FISHER	**CIVIL ACTION**
VERSUS	**NO.**
WILLIE DANOS, **GULF OIL CORPORATION** **and** **THE TRAVELERS INSURANCE CO.**	**SECTION E**

COMPLAINT

Plaintiff, DORIS JEAN FISHER, respectfully states and alleges upon information and belief that:

I.

Plaintiff, DORIS JEAN FISHER is a resident of and domiciled in Buras, Parish of Plaquemines, State of Louisiana.

II.

Defendant, WILLIE DANOS is a resident of and domiciled in the Parish of Plaquemines, State of Louisian.. and at all times pertinent hereto owned, controlled, and operated a vessel known as the "ROAD RUNNER II".

III.

Defendant, GULF OIL CORPORATION is a foreign corporation authorized to do and doing business in the State of Louisiana.

IV.

Defendant, TRAVELERS INSURANCE COMPANY, at all material times hereto insured defendant GULF OIL CORPORATION under which policy of insurance said insurance company agreed to undertake and satisfy and pay any and all claims for damages which GULF OIL CORPORATION may be legally liable because of any negligence of GULF OIL CORPORATION. As a consequence of the events set forth below, plaintiff has a direct right of action under LSA R.S. 22:655, against the said TRAVELERS INSURANCE COMPANY as the insurer of GULF OIL CORPORATION.

V.

This is a case of admiralty and maritime jurisdiction, as will hereinafter more fully appear, within the meaning of Rule 9(h).

VI.

On November 11, 1974 Plaintiff was an invitee aboard defendant WILLIE DANOS' Lafitte Skiff "ROAD

RUNNER II" in the navigable waters of Emeline Pass four miles east of Venice, Louisiana when she was caused to sustain serious, permanent and disabling injuries to her mind and body, all as direct result of the negligence of defendant WILLIE DANOS and/or the unseaworthy condition of defendant DANOS' vessel, the negligent operations and maintenance of said vessel, it's gear and appurtenances. Plaintiff further avers that her injuries were caused or contributed to by the negligence of GULF OIL CORPORATION in failing to properly maintain and light a fixed structure in the navigable water of Emeline Pass.

VII.

That as a direct result of the said accident and injuries sustained, plaintiff was rendered disabled and has sustained a loss of wages, has incurred numerous medical expenses and will incur future medical expenses, has suffered extreme pain and mental anguish in the past and will suffer extreme pain and mental anguish in the future, and has suffered and will suffer in the future extreme embarrassment and mental anguish, all for which plaintiff is entitled to sue and recover from the defendants herein, damages in the sum of THREE HUNDRED THOUSAND AND NO/100 ($300,000.00) DOLLARS.

VIII.

The said accident and resulting permanent injuries to plaintiff were due solely and entirely to the negligence of

defendants WILLIE DANOS through the negligent operation, maintenance and care of said vessel, to the unseaworthy condition of said vessel, and to the failure to equip said vessel with the proper gear and appurtenances and the negligence of GULF OIL CORPORATION in failing to properly maintain a jettie owned and under their control in Emeline Pass, four miles east of Venice, Louisiana.

WHEREFORE, plaintiff prays that there be judgment in her favor and against the defendants WILLIE DANOS, GULF OIL CORPORATION and TRAVELERS INSURANCE COMPANY jointly and in solido for the sum of THREE HUNDRED THOUSAND AND NO/100 ($300,000.00) DOLLARS, plus interest and costs.

/S/ROBERT McCOMISKEY
ROBERT McCOMISKEY
912 Carondelet Building
226 Carondelet Street
New Orleans, La. 70130
Phone: 581-5981

/S/ JEAN S. SENAC, JR.
JEAN S. SENAC, JR.
3814 Veterans Mem. Blvd.
Metairie, La. 70002
Phone: 888-3090

PLEASE SERVE:

Willie Danos
P.O. Drawer C
Venice, La.

Gulf Oil Corporation through its agent
CT Corporation Systems
1300 Hibernia Bank Building
New Orleans, La.

Travelers Insurance Company through
Honorable Wade O. Martin
Secretary of State
Baton Rouge, La.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DORIS JEAN FISHER,	CIVIL ACTION
Plaintiff	NO. 75-3447
VERSUS	SECTION "E"
WILLIE DANOS, GULF OIL CORPORATION AND THE TRAVELERS INSURANCE COMPANY,	
Defendants	

AMENDED AND SUPPLEMENTAL ANSWER OF GULF OIL CORPORATION AND THE TRAVELERS INSURANCE COMPANY

The amended and supplemental answer of Gulf Oil Corporation (hereinafter Gulf) and The Travelers Insurance Company (hereinafter Travelers), filed with leave of court, to the complaint of Doris Jean Fisher represents:

1.

Doris Jean Fisher is a resident citizen of Louisiana.

2.

Gulf Oil Corporation is a corporation organized and existing under the laws of Pennsylvania, with its principal business establishment in Pennsylvania.

3.

The Travelers Insurance Company is a corporation organized and existing under the laws of Connecticut, with its principal business establishment in Connecticut.

4.

The matter in controversy exceeds $10,000.00, exclusive of interest and costs.

5.

The claim asserted by Doris Jean Fisher against Gulf Oil Corporation and The Travelers Insurance Company, previously brought herein by the plaintiff only under the maritime jurisdiction of the court, is also within the diversity jurisdiction of the court.

6.

Gulf and Travelers are entitled to and demand tarial by jury on all issues.

7.

In the alternative, the plaintiff's claim against Gulf and Travelers is barred by the defense of res judicata because she has by written compromise released all claims arising out of the accident and injuries in suit.

8.

In the further alternative, such rights as plaintiff may have against Gulf and Travelers are reduced by the proportionate negligence of Willie Danos and, additionally, by any sums, benefits or considerations which plaintiff has received from Willie Danos or on account of Willie Danos.

WHEREFORE, Gulf Oil Corporation and The Travelers Insurance Company pray for trial by jury on all issues, and that the plaintiff's claims be dismissed with prejudice at the plaintiff's costs.

Charles Hanemann
of
Henderson, Hanemann & Morris
A Professional Law Corporation
Attorneys for Defendants Gulf
Oil Corporation and The
Travelers Insurance Company
300 Lafayette Street
Houma Louisiana 70360
Telephone: 581-1434 (New Orleans)

CERTIFICATE

I hereby certify that I have served a copy of the above and foregoing Amended and Supplemental Answer of Gulf Oil Corporation and The Travelers Insurance Company on plaintiff, by placing a copy of said answer in the United States Mail, postage prepaid, addressed to plaintiff's counsel at his address of record.

Houma, Louisiana, October _____, 1976.

_____

Charles Hanemann

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DORIS JEAN FISHER	CIVIL ACTION
VERSUS	NO. 75-3447
WILLIE DANOS, GULF OIL CORPORATION and THE TRAVELERS INSURANCE COMPANY	SECTION "E"
	PRE-TRIAL ORDER

1. A Pre-Trial Conference was held on Tuesday, January 17, 1978 at 9:00 A.M., before the Honorable Fred J. Cassibry.

2. Present: For Plaintiff, DORIS JEAN FISHER:

Robert McComiskey,
Attorney at Law
407 Decatur Street
New Orleans, Louisiana 70130

For Defendants, GULF OIL and TRAVELERS INSURANCE COMPANY:

Charles Hanemann, Attorney at Law
Henderson, Hanemann & Morris
(A Professional Law Corporation)

300 Lafayette Street
Houma, Louisiana 70360

For Defendant in Cross-Claim,
WILLIE DANOS:

Darryl W. Bubrig, Sr.
Attorney at Law
Bubrig & Scandurro
P.O. Drawer K
Buras, Louisiana 70041

3. DORIS FISHER, a citizen of Louisiana, sued WILLIE DANOS, a citizen of Louisiana, and GULF OIL CORPORATION, THE TRAVELERS INSURANCE COMPANY and CHEVRON OIL COMPANY, all citizens of states other than Louisiana. The plaintiff has voluntarily dismissed her suit against Chevron Oil Company. The plaintiff has compromised with Willie Danos and dismissed her suit against him. The sole remaining defendants, therefore, are Gulf Oil Corporation and The Travelers Insurance Company, who have filed a cross-claim against Willie Danos.

4. The substantive law to be applied is Admiralty. There is diversity of citizenship. Trial will be by jury.

5. No motions are presently pending. Both the plaintiff and the defendant in cross-claim have been deposed. But the court reporter who recorded the depositions has

recently informed counsel that he has lost the shorthand notes of the depositions and, through thorough and diligent search, has been unable to locate them. Accordingly, the depositions of the plaintiff and of the defendant in cross-claim must be taken again, and counsel are in the process of arranging their depositions by agreement. If agreement cannot be reached, however, counsel for defendants contemplates moving to reopen discovery and compel the depositions.

Defendant, Gulf Oil, did not answer plaintiff's interrogatories of July 16, 1976 until December 28, 1977, thirty-two (32) days before trial is scheduled. Plaintiff is entitled to depose numerous individuals mentioned in defendant's answers to interrogatories and does not think that this can be accomplished before January 30, 1978, unless defendant is willing to voluntarily produce all those individuals mentioned in their answers to interrogatories before January 25, 1978, at a time convenient to counsel for plaintiff.

6. (a) A brief summary of the material facts claimed by the plaintiff is:

On or about November 8, 1974, the plaintiff, Doris Jean Fisher was a passenger in the M/V "ROAD RUNNER II", a Lafitte skiff owned and operated by Willie Danos. At approximately o'clock P.M. on that date, Danos was navigating his vessel in a northeast direction through Dennis Pass, also known as Emeline Pass, when his vessel ran into an unlit wind dam protruding over one

hundred (100) feet into the Pass. The wind dam struck by the M/V "ROAD RUNNER II", was one of five (5) wind dams which defendant had constructed without written approval of the United States Coast Guard and Corps of Engineers. The particular wind dam struck was one of two (2) fifty (50) feet longer than the other three (3) wind dams. There were no signs or lights to warn approaching vessels of these wind dams and more particularly no warning devices that two (2) of these wind dams were longer than those on either side of the one (1) that the M/V "ROAD RUNNER II" struck. As a result of thea collision the force of impact drove the plaintiff's leg through the vessel's transom causing the following injuries; multiple abrasions and contusions, a cerebral concussion, a comminuted closed fracture of the left proximal femur, a comminuted closed fracture of the right tibia, a comminuted closed fracture of the right clavicle and probable herniated disc of L-5, S-1.

Since filing the instant suit, plaintiff has settled her claim against Willie Danos and dismissed him from this action.

6. (b) The following is a brief summary of material facts claimed by Gulf Oil Corporation and The Travelers Insurance Company.

Dennis Pass, also known as Emeline Pass, is a branch of one of the minor passes of the Mississippi River. A minor pass known as Baptiste Collette Bayou flows from the left descending, or East, bank of the Mississippi River

at approximately 11.3 miles AHP. Emeline Pass branches off from Baptiste Collette Bayou, and flows in a generally northeasterly direction toward the Gulf of Mexico. Emeline Pass travearses an oilfield, known as the Grand Bay field, operated by Gulf Oil Corporation. In 1968, to check erosion, Gulf Oil Corporation erected seven wind dams, two along the northwest bank of Emeline Pass, and five along the southeast bank. Gulf Oil Corporation designed, erected and maintained the wind dams in a safe, proper and lawful manner.

Willie Danos owned and operated a Lafitte skiff, called the M/V ROADRUNNER II. The Plaintiff claims that she was a passenger in the M/V ROADRUNNER II struck the third wind dam from the Mississippi River on the southeast bank of Emeline Pass, while heading northeast down Emeline Pass.

Gulf Oil Corporation and The Travelers Insurance Company do not admit that an accident occurred, or that an accident occurred as claimed.

If an accident occurred, and occurred as claimed, it was caused solely and proximately by the concurrent negligence of the plaintiff and Willie Danos. In the alternative, the negligence of the plaintiff and Willie Danos was active, any negligence on the part of Gulf Oil Corporation being merely passive. In the further alternative, the negligence or other fault of the plaintiff and of Willie Danos played a far greater causal role in the accident than

did any negligence or fault of Gulf Oil Corporation.

The plaintiff's injuries and damages are not as great as claimed.

The plaintiff has compromised her claims against Willie Danos, and has executed a release in his favor. The release serves to release the plaintiff's claims against Gulf Oil Corporation, also. Alternatively, the plaintiff's claims against Gulf Oil Corporation are reduced by the proportion to which her own negligence and that of Willie Danos contributed to the accident.

6. (c) Defendant in cross-claim adopts as to the circumstances of the accident, the summary of material facts as set forth by the plaintiff.

7. Uncontested material facts are:

(a) The plaintiff is, and was at all material times, a citizen of Louisiana.

(b) At all material times, Willie Danos owned and operated a Lafitte skiff known as the M/V "ROAD RUNNER II".

(c) On August 10, 1976, the plaintiff executed a Receipt and Release.

8. The following issued of fact are in contest:

(a) Negligence or fault of Gulf Oil Corporation;

(b) Negligence or fault of Willie Danos;

(c) Negligence or fault of the plaintiff;

(d) Active-passive negligence;

(e) Apportionment of fault;

(f) The manner in which the accident occurred;

(g) Causation;

(h) Foreseeability;

(i) The condition of the M/V ROADRUNNER II and of its appurtenances

(j) Condition of Dennis Pass;

(k) Nature and extend of damages, if any;

(l) Credibility of witnesses.

9. The following issued of law are in contest:

(a) Issues of law inherent in the foregoing issues of fact;

(b) What duties, if any, were owed to the plaintiff;

(c) If any duties were owed to the plaintiff, by whom they were owed;

(d) Standards of care;

(e) Whether the wind dams were constructed and/or maintained in violation of applicable law or regulations;

(f) Effect of the releases;

(g) Recoverable items of damages.

10. Discovery is not complete. The court reporter who took the deposition of both, plaintiff and Willie Danos, has lost his shorthand notes and it will be necessary to redepose both. Defendant has recently answered plaintiff's interrogatories and provided the names of numerous persons whom plaintiff must depose prior to trial.

11. (A) The following is a list of exhibits to be offered by the plaintiff:

(a) Interrogatories to parties;

(b) Answers thereto;

(c) Request for admissions to Gulf Oil;

(d) Answers thereto;

(e) Any deposition of a party or witness who is unable to be present at trial;

(f) Photographs of Dennis Pass;

(g) Photographs of the M/V "ROAD RUNNER II";

(h) Photographs of the plaintiff;

(i) Medical records of plaintiff from West Jefferson General Hospital, including x-rays;

(j) Medical records of plaintiff from Dr. Jack L. Winters

(k) Medical records of plaintiff from Port Sulphur Hospital;

(l) Wage and tax records of plaintiff;

(m) Charts, drawings and diagrams of experts;

(n) Regulations of the Corps of Engineers;

(o) Applicable OSHA Regulations;

(p) Photographs of the wind dams in question;

(q) Any exhibit listed by any other party.

11. (B) Defendant Gulf Oil may introduce at trial the following exhibits:

(a) Interrogatories to parties;

(b) Answers thereto:

(c) Deposition of the plaintiff;

(d) Deposition of Willie Danos;

(e) Any deposition admissible under the Federal Rules of Evidence and/or the Federal Rules of Civil Procedure;

(f) Photographs of Dennis Pass;

(g) Photographs of Southwest Pass;

(h) Charts of the Grand Bay area;

(i) Certified copies of official records of the United States Coast Guard;

(j) "Release and Agreement" of February 28, 1975;

(k) "Receipt and Release" of August 10, 1976;

(l) Check No. 1238 against the account of Mr. or Mrs. Willie J. Danos with the Delta Bank and Trust Company;

(m) Any exhibit listed in the pre-trial order or in any supplement thereto, or offered at the trial, by any other party.

11. (C) Defendant in cross-claim, Willie Danos, may introduce the following exhibits:

(a) Photographs of the wind dams in question;

(b) Any exhibit listed by any other party.

12. All parties reserve the right to use any deposition admissible under the Federal Rules of Evidence and/or the Federal Rules of Civil Procedure.

13. All parties may use a black board, chalk, pointer, posters or charts and sketches of the Grand Bay area.

14. Plaintiff will call the following witnesses:

(a) Doris Jean Fisher, Euras, Louisiana

(b) Pat

(c) Dr. Jack L. Winters
925 Avenue C, Marrero, La. 70072

(d) Charles Wecker
Foot Prytanis Street, New Orleans, La.

(e) Expert to be named

(f) Any witness listed by any other party.

Defendant, Gulf Oil, may call the following witnesses:

(a) H. D. Carter, Venice, Louisiana, concerning facts;

(b) R. E. Valentine, Houston, Texas, concerning facts;

(c) Fred Durio, Lafayette, Louisiana, concerning facts;

(d) Henry Cooper, Venice, Louisiana, concerning facts;

(e) The plaintiff, on cross-examination;

(f) Willie Danos, P.O. Drawer C, Venice, Louisiana 70091, concerning facts, damages and releases;

(g) John D. Monteiro, Houma, Louisiana, expert in marine construction;

(h) Bud Lathan, Venice, Louisiana, expert boatman;

(i) Robert Fry, Houston, Texas, Expert in marine construction:

(j) William Key, 129 Harding Drive, Houma, Louisiana, expert boatman;

(k) Chief Petty Officer Ballance, Hale Boggs Federal Office Building, New Orleans, Louisiana, concerning facts;

(l) Captain R. R. Morgan, Hale Boggs Federal Office Building, New Orleans, Louisiana, concerning facts;

(m) H. L. Gauthier, New Orleans, Louisiana, concerning facts;

(n) N. H. Moore, P.O. Box 61790, New Orleans, Louisiana 70161, concerning facts;

(o) Dr. Jack L. Winters, 925 Avenue C, Marrero, Louisiana 70072, concerning damages;

(p) Sherman O'Brian, c/o The Den, Venice, Louisiana, concerning damages;

(q) Bobby Mitchell, Venice, Louisiana, concerning damages;

(r) Butch Copeland, Venice, Louisiana, concerning damages;

(s) Mrs. Robert Fisher, Route 3, Tuscumbia, Alabama, concerning facts and damages;

(t) Donnie Moreaux, Venice, Louisiana, concerning facts and damages;

(u) Mrs. Johnny Garrett, Venice, Louisiana, concerning facts and damages;

(v) Mrs. Coney, Nairn, Louisiana, concerning damages;

(w) James Ross Fisher, Venice, Louisiana, concerning damages;

(x) Mrs. Willie J. Danos, P.O. Drawer C, Venice, Louisiana 70091, concerning damages and releases;

(y) Darryl Bubrig, P.O. Drawer K, Buras, Louisiana 70041, concerning releases;

(z) Tressie Adams, P.O. Drawer K, Buras, Louisiana 70041, concerning releases;

(aa) Nicoline Armstrong, P.O. Drawer K, Buras, Louisiana 70041, concerning releases;

(bb) Jean E. Senac, Jr., 407 Decatur Street, New Orleans, Louisiana 70130, concerning releases;

(cc) Any witness listed in the pre-trial order or in any supplement thereto, or called at the trial, by any other party.

Defendant in cross-claim may call the following witness:

(a) Willie Danos, Venice, Louisiana Fact

(b) Any witness listed by any other party.

No further witnesses can be added to the Pre-Trial Order less than ten (10) full work days before trial.

15. This is ~~(is not)~~ a jury case and a jury trial is ~~(is not)~~ applicable to all aspects of the case.

(Proposed jury instructions any any special questions that the Court is asked to put to prospective jurors on voir dire, shall be delivered to the Court and opposing counsel not later than one week prior to the trial date, unless specific leave to the contrary is granted by the Court.

Each party shall file with the Court a separate memorandum on contentions of fact and law at least two (2) days prior to trial.)

16. The issue of liability (will or will not) be tried separately from that of Quantum.

17. The defendants' contention that a "release and agreement" may bar plaintiff's rights against defendant might best be resolved before the trial on the merits.

18. It is expected that trial of this case will require 3 days. Trial of this case is hereby set for the 30th day of January, 1978, at _____ o'clock A.M.

19. This Pre-Trial Order has been formulated after conference at which counsel for the respective parties have appeared in person. Reasonable opportunity has been afforded counsel for corrections, or additions, prior to signing. Hereafter, this Order will control the course of the trial and may not be amended except by consent of the parties and the Court or the Order of the Court to prevent manifest injustice.

20. The possibility of settlement of this case was considered.

New Orleans, Louisiana, this 17 day of January, 1978.

/S/FRED J. CASSIBRY
UNITED STATES DISTRICT JUDGE

APPROVED:

/S/ROBERT McCOMISKEY
ROBERT McCOMISKEY
ATTORNEY FOR PLAINTIFF
407 DECATUR STREET
NEW ORLEANS, LOUISIANA 70130
TELEPHONE: (504) 581-5981

/S/CHARLES HANEMANN
CHARLES HANEMANN - of
HENDERSON, HANEMANN & MORRIS
A PROFESSIONAL LAW CORPORATION
ATTORNEYS FOR DEFENDANTS, GULF OIL
CORPORATION AND THE TRAVELERS
INSURANCE COMPANY
300 LAFAYETTE STREET
HOUMA, LOUISIANA 70360
TELEPHONE (504) 581-1434 - (New Orleans)

/S/DARRYL W. BUBRIG, SR.
DARRYL W. BUBRIG, SR.
BUBRIG & SCANDURRO
ATTORNEYS AT LAW
P.O. DRAWER K
BURAS, LOUISIANA 70041
ATTORNEY FOR DEFENDANT IN
CROSS—CLAIM, WILLIE DANOS
TELEPHONE: (504) 657-7668

APPENDIX D

MINUTE ENTRY
LIVAUDAIS, M.
APRIL 7, 1978

FILED APR. 10, 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DORIS JEAN FISHER — CIVIL ACTION

VERSUS — NUMBER 75-3447

WILLIE DANOS, ET AL. — SECTION "E"

A preliminary conference was held on April 7, 1978.

PRESENT: NO APPEARANCE FOR PLAINTIFF
DARRYL W. BUBRIG, SR.,
ATTORNEY FOR WILLIE DANOS
CHARLES HANEMANN,
ATTORNEY FOR GULF OIL AND
TRAVELERS INS.

Pleadings have been completed.

Jurisdiction is established.

Motions will be filed so as to be noticed for a motion day not less than thirty days prior to the date fixed for

trial.

Discovery will be completed not later than 21 days prior to the date fixed for pre-trial conference.

Settlement possibilities were discussed.

This case does not involve extensive documentary evidence.

A final pre-trial conference will be held before the District Judge on October 10, 1978 at 9:45 A.M. Counsel will be prepared in accordance with the final pre-trial notice attached.

Trial will commence on October 23, 1978 at 10:00 A.M. before the District Judge with a jury. It is expected to last 2 days.

CLERK TO NOTIFY COUNSEL

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DORIS JEAN FISHER — NO. 75-3447

Versus — CIVIL ACTION

WILLIE DANOS,
GULF OIL CORPORATION, AND
THE TRAVELERS INSURANCE CO. — SECTION "E"

JUDGMENT

Considering the answers of the jury to interrogatories prepounded to it by the Court at the trial of this matter on April 9, 1980, and

Considering the direction of the Court as to entry of judgment upon said answers;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of Gulf Oil Corporation, and The Travelers Insurance Co., and against plaintiff, Doris Jean Fisher, dismissing said plaintiff's suit with costs.

IT IS ACCORDINGLY, ORDERED that the cross-claim of Gulf Oil Corporation, and The Travelers Insurance

Co., against Willie Danos, is hereby DISMISSED.

New Orleans, Louisiana, this 10th day of April, 1980.

/S/FRED J. CASSIBRY

UNITED STATES DISTRICT JUDGE

APPENDIX F

Doris Jean FISHER, Plaintiff-Appellant
Cross-Appellee,

v.

Willie DANOS, Defendant-Appellee,

v.

GULF OIL CORPORATION and Travelers Insurance Company, Defendants-Appellees Cross Appellants.

No. 80-3510

Summary Calendar.

United States Court of Appeals,
Fifth Circuit.

March 31, 1982.

Action was brought against oil company and its insurer to recover for injuries sustained when a skiff on which plaintiff was a passenger struck an unlit jetty built by oil company in the Mississippi River. The United States District Court for the Eastern District of Louisiana, Fred J. Cassibry, J., rendered judgment for defendants on jury verdict, and appeal and cross appeal were taken. The Court

of Appeals, Brown, Circuit Judge, held that: (1) suit was within the admiralty jurisdiction; (2) plaintiff was entitled to revoke her election of jury trial, and since defendants were not prejudiced by election of nonjury trial the case should have been tried nonjury; and (3) that, on remand, district court made its decision solely on basis of records and testimony as submitted to the jury.

Reversed and remanded.

Appeals from the United States District Court for the Eastern District of Louisiana.

Before BROWN, POLITZ and WILLIAMS, Circuit Judges.

JOHN R. BROWN, Circuit Judge:

This appeal arises from Doris Jean Fisher's lawsuit against Gulf Oil Company and The Travelers Insurance Company for injuries sustained when a skiff on which Fisher was passenger struck an unlit jetty built by Gulf. The owner of the skiff, Willie Danos, was released by compromise before this suit was filed. At trial, the jury found on special interrogatories that Gulf was not negligent, that the negligence of Mr. Danos was 70 percent, and that Doris Fisher was 30 per cent contributorily negligent. Judgment was entered on the verdict, and following denial of motion

for j.n.o.v. or for new trial or both, the present appeal was brought. Gulf and Travelers have filed a cross-appeal, claiming that the compromise executed by Fisher released Gulf and Travelers as well as Danos. On the basis of Fisher's right to a non-jury trial, we reverse and remand to the District Court for reconsideration by the Judge on the basis of the present record uninfluenced by the jury verdict.

Non-Jury Trial Election[1]

Fisher contends that she was entitled to a non-jury trial because of the maritime nature of her claim. *See* F.R.Civ.P. 9(h); *Romero v. Bethlehem Steel Corp.*, 515 F.2d 1249, 1252 (5th Cir. 1975) (general rule that admiralty claims are to be tried without a jury). After Danos was released, complete diversity of citizenship existed, and Gulf amended its answer to plead diversity and pray for trial by jury. In January, 1978, a pre-trial order designated the case as one to be tried by a jury. Fisher contends that

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[1] The Court requested that the parties in this dispute submit supplementary briefs addressing this complex issue as follows:

(1) In an admiralty action pursuant to Rule 9(h), does the plaintiff have an absolute right to a non-jury trial, and does acquiescence in a pre-trial order, which designates the case as one to be tried by a jury, constitute an "election" by the plaintiff to proceed to trial with a jury? *See Johnson v. Penrod*, 469 F.2d 897 at 903.

(2) When a cause of action begins and remains an admiralty suit pursuant to Rule 9(h), what effect does the complete diversity of parties under federal rules of jurisdiction have upon (a) the plaintiff's right to demand a non-jury trial and (b) the defendants' right to a jury trial? *See Powell v. Offshore Navigation, Inc.*, 644 F.2d 1063 at 1066.

she repeatedly sought to amend this order to obtain a non-jury trial, and that her signature on the first pre-trial order did not constitute a final election. Even if that order is seen as an election, it is argued that it is not irrevocable. Because seventeen months elapsed between notice to Gulf of Fisher's desire to proceed without a jury and the commencement of trial, and because Gulf understood that this action was capable of being brought within admiralty jurisdiction, she urges that no prejudice may be claimed by Gulf.

Both sides of the present dispute agree that a Rule 9(h) election, whether to proceed in admiralty without a jury or at law with a jury, is not irrevocable. *Doucet v. Wheless Drilling Co.*, 467 F.2d 336, 339 (5th Cir. 1972). Gulf perceives that although Fisher elected in her complaint to proceed without a jury under Rule 9(h), she later impliedly revoked that election, with the consent of the court and the defendants, and chose to proceed with a jury.

(Footnote 1 continued)

(3) Does a defendant in a 9(h) case have a legal *right* to a jury trial (a) in the absence of any opposition from the 9(h) plaintiff? (b) when opposed by the 9(h) plaintiff?

(4) Were the defendants entitled to a trial by jury on the issue of whether or not Fisher released her claims against Gulf and Travelers?

(5) If this Court finds that the plaintiff was entitled to a non-jury trial, can the District Court make its decision solely on the basis of the records submitted to the jury, or will a new trial be required?

From Gulf and Travelers, we received a detailed brief outlining several aspects of the right to a jury trial in admiralty cases. Counsel for Fisher, in response, merely filed a singularly unhelpful letter that failed to address any one of the Court's specific questions regarding the issue of non-jury trial election.

Gulf bases its perception upon her attorney's signature on the pre-trial order of January, 1978. Moreover, Gulf contends that Fisher acquiesced in the District Court's April, 1978, setting of the case for trial by jury. However, on October 10, 1978, at a second pre-trial conference, Fisher challenged Gulf's right to trial by jury. Because trial was scheduled for October 23, 1978, Gulf quickly moved for recognition of its right to a trial by jury on the issue of whether the compromise agreement with Danos also released Gulf and Travelers. Fisher then filed a memorandum alleging that her right to a non-jury trial, or, in the alternative, the right to revoke her choice of trial by jury, was never waived and surely persisted as a greater right than Gulf's right to a jury on the incidental demand against Danos. Gulf's motion for a jury was granted, but the October 23, 1978, trial setting was continued. Fisher filed an interlocutory appeal to this Court on the jury issue, and we disallowed the appeal as not ripe for judicial review.

[1] The issue is further complicated by Gulf's position that it is entitled to a trial by jury because complete diversity of citizenship exists between Fisher and the defendants Gulf and Travelers. Indeed, Gulf even argues that diversity is the only basis for federal jurisdiction in this case, thus creating its absolute right to trial by jury. However, given the facts that the vessel involved in this accident was not primarily a pleasure boat, that the accident occurred on a navigable channel of the Mississippi River, and that the alleged cause of the collision was an unlit jetty obstructing the channel, we find that the case is

properly characterized as one in admiralty.[3] *See Kelly v. Smith*, 485 F.2d 520, 523-526 (5th Cir. 1973), *cert. denied*, 416 U.S. 969, 94 S.Ct. 1991, 40 L.Ed.2d 558 (1974). In the alternative, Gulf argues that even if it did not have a right to a trial by jury, the trial judge may properly have the case tried to an advisory jury, F.R.Civ.P. 39(c); thus if any error exists as to Fisher's right to a non-jury trial, the error is harmless. This matter deserves more attention, particularly with regard to the District Court's admiralty jurisdiction.

[2] In *Johnson v. Penrod Drilling Co.*, 469 F.2d 897 (5th Cir. 1972), this Court faced the situation where Rule 9(h) plaintiffs attempted to withdraw their earlier demand for trial by jury without the consent of the defendants and without a finding by the District Court that a right to trial by jury did not exist. 469 F.2d at 901-03. We held that the defendant was entitled to trial by jury because the plaintiffs did not comply with F.R.Civ.P. 39(a). Likewise, in *Romero v. Bethlehem Steel Corp.*, 515 F.2d 1249 (5th Cir. 1975), a plaintiff was forced to a non-jury trial because of his failure to amend and withdraw his admiralty claim under Rule 9(h). 515 F.2d at 1253. The present case, however, is somewhat more confusing. Fisher did attempt

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[3] Fisher, in her original complaint, properly identified her claim as one falling under the admiralty and maritime jurisdiction within the meaning of Rule 9(h). Although Gulf properly points out that Rule 9(h) is especially designed for cases which are subject to admiralty and also some other ground of federal jurisdiction, we find that when the defendant Dancs was released, and diversity jurisdiction arose, Fisher's claim was adequately identified, in her original pleading, as an admiralty claim under Rule 9(h). *See Moore's Federal Practice Rules Pamphlet*, F.R.Civ.P. 9 at 9.2[6], Comment on 9(h) (1981).

to oppose Gulf's insistence on a jury trial and, given our construction that the claim was adequately identified as one under admiralty, her right to a non-jury trial remained an option even if she had earlier consented to a trial by jury.

In *Harrison v. Flota Mercante Grancolombiana, S.A.*, 577 F.2d 968, 986 (5th Cir. 1978), we held that "by electing to proceed under 9(h) rather than by invoking diversity jurisdiction, the plaintiff may preclude the defendant from invoking the right to trial by jury which may otherwise exist." 577 F.2d at 986, *citing Romero, supra.* Rule 9(h) is a "device by which the pleader may claim the special benefits of admiralty procedures...including a non-jury trial." *Romero*, 515 F.2d at 1252. There can be no doubt that this case was within the Court's admiralty jurisdiction. The substance of the injuries took place on navigable waters in connection with the navigation of a vessel. *See Executive Jet Aviation v. City of Cleveland*, 409 U.S. 249, 93 S.Ct. 493, 34 L.Ed.2d 454 (1972), *cited in Moser v. Texas Trailer Corp.*, 623 F.2d 1006, 1009 (5th Cir. 1980); *Sperry Rand Corp. v. Radio Corp. of America*, 618 F.2d 319, 320-22 (5th Cir. 1980); *Boudloche v. Conoco Oil Corp.*, 615 F.2d 687, 688 (5th Cir. 1980). In light of Fisher's right to a non-jury trial, we must remand this case to the District Court.[3] However, a new trial is not technically re-

[3] Although Fisher's election of a non-jury trial was made just 13 days before the initial trial setting, an action that might have severely prejudiced Gulf and Travelers, the actual trial did not take place for another 17 months. Thus it could not be said that, in actuality, Gulf and Travelers relied on the plaintiff's first election for a jury trial.

quired in the present action, because the district Court shall make its decision solely on the basis of the records and testimony as submitted to the jury.

Extent of the Release

Before concluding, it is necessary to address Gulf's cross-appeal. Gulf urges that even if this Court finds errors in the trial proceedings such errors are harmless because the trial court should have dismissed Fisher's claims on the grounds of the release executed February 28, 1975. Gulf relies on the language in the compromise agreement stating that Fisher releases "Willie Danos and all other persons." At trial, Fisher by her testimony claimed to have not understood all of the terms of the agreement that she signed. The District Court granted a directed verdict against Gulf and Travelers, recognizing Fisher's intent to reserve all of her rights against Gulf and Travelers. The issue was argued by counsel for both sides at a hearing on May 3, 1978, and Gulf's motion for summary judgment on the basis of release was denied.

Gulf claims that factual issues existed that should have been decided by the jury, namely whether Fisher did intend to release her claims against Gulf and Travelers, notwithstanding her testimonial, self-serving denial of such intent at trial. Fisher argues, and the District Court apparently agreed, that it is unthinkable that she would release her claims against Gulf and Travelers in light of the serious injuries that she sistained. This Court, in *Boeing*

Co. v. Shipman, 411 F.2d 365, 374 (5th Cir. 1969), set forth the standard to be applied on motions for directed verdicts:

> [The] Court should consider all of the evidence—not just that evidence which supports the non-mover's case—but in the light and with all reasonable inferences most favorable to the party opposed to the motion. If the facts and inferences point so strongly and overwhelmingly in favor of one party that the Court believes that reasonable men could not arrive at a contrary verdict, granting of the [motion] is proper. On the other hand, if there is substantial evidence opposed to the motions, that is, evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions, the [motion] should be denied, and the case submitted to the jury.

A careful reading of the document entitled "Release and Agreement", executed on February 28, 1975, reveals that Willie Danos is the central figure in the compromise agreement. It states that Fisher and Danos agree to compromise any claims against Danos in exchange for payment of medical expenses and reasonable living expenses including the purchase of a mobile home. The controversial clause follows, that Fisher expressly releases and forever

discharges "Willie Dance and all other persons, from any and all claims for damages arising out of or in any way connected with the boating incident..." Also included is a declaration that Fisher fully understands the compromise settlement.

Under the peculiar circumstances of this case, we need not determine whether the directed verdict was correct, since the Judge as trier of fact can now determine the issue both as a matter of fact and, on such finding, as a matter of law.

Conclusion

Because of our remand for a trial by the trial judge on the basis of the record made before the jury, it is unnecessary for us to reach the issues of (i) whether the jury instructions were proper, and (ii) whether the jury's finding of contributory negligence was supported by the record.

REVERSED AND REMANDED.

81-241

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In the Supreme Court of the United States

OCTOBER TERM, 1981

NO.

GULF OIL CORPORATION AND
TRAVELERS INSURANCE COMPANY,
Petitioners,

versus

DORIS JEAN FISHER,
Respondent

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. 81-2412

GULF OIL CORPORATION AND
TRAVELERS INSURANCE COMPANY,
Petitioners,

versus

DORIS JEAN FISHER,
Respondent

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

Pursuant to Rule 28.1 of the Rules of the Supreme Court of the United States, the Petitioners submit the following lists of their subsidiaries and affiliates.

GULF OIL CORPORATION
SUBSIDIARIES AND AFFILIATES

Gulf Oil Corporation lists the following subsidiaries (except wholly owned subsidiaries) and affiliates: A/S Jargul; A/S Jargul and Co. K/S; AB Djurgardsberg; Adela

Investment Company, S.A.; Afran Transport Company; Agricultural Anhydrous Ammonia Co. Ltd.; Albert Rose Chemicals, Ltd.; Alberta Products Pipe Line Ltd.; Alberta Underground Storage Limited; Allied-General Nuclear Services; Andogas S.A. (Switzerland); Asia Polymer Corp.; Autobahn-Raststaetie Wuerenlos Ag; Aviation Fueling Services-GT&T International Aviation Sales; Balinesian Gulf Oil Limited; Britama Tankers Limited; Britamco Limited; British Kewanee, Inc.; Canada Systems Group (EST) Limited; Cansulex Limited; Carboquimica, S.A.; Caribbean Gulf Refining Corporation; Carnduff Gas Limited; Cayman Kewanee Ltd.; The Central Pipeline Company Limited; Chicago Wire Goods Company; China Gulf Oil Company Limited; China Gulf Plastics Corporation; Chinhae Chemical Company, Ltd.; Colombian Gulf Oil Company; Colonial Pipeline Company; Commercial Alcohols Limited; Compagnie D'Investissement Combustibles De Reacteurs A Haute Temp; Compania Petrolera Aguarico, S.A.; Componentes Industriales Mexicanos, S.A.; "Condor" Industria Quimica, S.A.; Coser S.A.; Crediton Enterprises, Inc.; Delaware Bay Transportation Company; Det Gronlandske Olieaktieselskab; Dixie Pipeline Company; Eastern Gulf Oil Company Limited; Econ Oil (1977) Inc.; Emery Joint Venture; Ethyleen Pijpleiding Maatschappij (Belgium) S.A.; Ethyleen Pijpleiding Maatschappij (Nederland) B.V.; Explorer Pipeline Company; The "400" Oil Company; G & C Realty Limited; The Gaelic Oil Company Limited; GAZ Propane Blanchard Ltee.; GEA/Power Cooling Systems, Inc.; General Atomic Company; General Atomic Europe-

GMBH-Dusseldorf; General Atomic Europe-GMBH-Zurich; Glen Park Gas Pipe Line Company Limited; Global Energy Operations & Management Company-International; Global Energy Operations & Management Company-Limited; Globes Oil and Gas Limited; G.S. Equipment and General Supply; Gulf Asian Investments Company Limited; Gulf Benzin A/S; Gulf Canada Limited; Gulf Canada Petroleum Inc.; Gulf Canada Resources Inc.; Gulf Canada Resources Leasing Inc.; Gulf Chemicals International, Inc.; Gulf Ecuatoriana de Petroleo, S.A.; Gulf Europe Company; Gulf Exploration Company; Gulf Fujairah Petroleum Limited; Gulf-Gas (Sweden) Aktiebolag; Gulf International Company; Gulf International Trading-Far East; Gulf Iran Company; Gulf Italiana S.P.A.; Gulf Kuwait Company; Gulf Marine and Services Company, Limited; Gulf Minerals Canada Limited; Gulf Musandam Petroleum, Limited; Gulf Offshore Ras Al Khaimah Petroleum Limited; Gulf Oil A/S; Gulf Oil Canada-Greenland A/S; Gulf Oil Chemicals Company Asia, Limited; Gulf Oil Company (Hong Kong) Inc.; Gulf Oil Company (Nigeria) Limited; Gulf Oil Company (Portugal) Limitada; Gulf Oil Egypt Limited; Gulf Oil Europeon Company; Gulf Oil Export Company; Gulf Oil (Great Britain) Limited; Gulf Oil (Ireland) Ltd.; Gulf Oil (Luxembourg) S.A.; Gulf Oil Mideast Trading Company; Gulf Oil (Nederland) B.V.; Gulf Oil (Nederland) Exploration and Production Company B.V.; Gulf Oil of Colombia Limited; Gulf Oil Pakistan Limited; Gulf Oil Raffinaderij B.V.; Gulf Oil Ras Al-Khaimah Limited; Gulf Oil Refining A/S; Gulf Oil Refining Limited; Gulf Oil Services, Inc.; Gulf Oil

Suez Limited; Gulf Oil (Switzerland); Gulf Oil Terminals (Ireland) Limited; Gulf Oil Trading Company Limited; Gulf Oil Trading Investments Limited; Gulf Oil (U.K.) Limited; Gulf Oil Zaire S.A.R.L.; Gulf Oman Petroleum, Limited; Gulf Overseas Trading, Inc.; Gulf Petroleum, S.A.; Gulf Sales and Supply, Inc.; Gulf Supply and Distribution Company Limited; Gulf Technology Europe B.V.; Gulf Transport Company Aktiebolag; Gulf U.K. Offshore Exploration Company, Limited; Gulf (U.K.) Offshore Investments Limited; Harshaw-Bryce & Co. Pty. Ltd.; Harshaw-Murata Kabushika Kaisha; Harshaw-Juarez S.A. de C.V.; Harshaw Cabo & Cia., S.A.; The Harshaw Chemical Company; Harshaw Chemical of Canada Ltd.; Harshaw Chemicals Limited; Harshaw Chemie B.V.; Harshaw Chemie G.M.B.H.; Harshaw Chemie S.A.R.L.; Harshaw Galvanotecnia; Harshaw Holland N.V.; Harshaw International Corporation; Harshaw Nuclear Electronics Inc.; Harshaw Quimica Ltda.; Hochtemperatur Reakorbau GMBH; Ico Pinturas, S.A.; Industrial Nickel, Inc.; Industrias Vencedor S.A.; Insco Holding & Finance Company N.V.; Insco Limited; Interprovincial Pipe Line Limited; Interquimica S.A.; Iranian Oil Participants Limited; Iranian Oil Services (Holdings) Limited; Java Gulf Limited; Kayeye Insurance Company, Ltd.; Kentucky Anfo Inc.; Kewanee Industries, Inc.; Kewanee Oil Company (U.K.) Limited; Kewanee Oil Company (U.K.) Limited Gabon; Kewanee Overseas Oil Company; Key International Drilling Co. Limited; Key Perfuracoes Maritimas Ltda.; Keydril Australia Inc.; Keydril (Nigeria) Limited; Keydril Limited; Kupan International Company; Kuwait

Oil Company Limited; Kuwait Oil Company Trustees Limited; Laurel Pipe Line Company; London Oil Refining Company Limited; Mainline Pipelines Limited; Maple Insurance Limited; Mene Grande Oil Company; Michigan Stations Personnel Services; Michigan Stations, A Division of Bulk Petroleum Corporation; Mid-Atlantic Chemical Corporation S.A.; Mid-Valley Pipeline Company; Midwest Carbide Corporation; Millmaster Onyx (Canada) Ltd.; Millmaster Onyx Corporation; Millmaster Onyx G.M.B.H.; Millmaster Onyx International Corporation; Millmaster Onyx U.K.; Millmaster Onyx Western Corporation; Montreal Pipe Line Limited; Morrow Fuel Oil Sales Ltd.; Mozambique Gulf Oil Company; Nedgulf Tankers R.V.; Netherlands Kewanee, Inc.; Newfoundland Propane Limited; New Frontiers Limited; Niugini Gulf Oil Pty. Limited; North River Energy Company; Northward Development Ltd.; Northwest Propane Ltd.; Northwest Terminals Ltd.; Norwegian Gulf Exploration Company A/S; Nova, An Alberta Corporation; Oil Shippers Service, Inc.; B.V. Olie Handelsvereeniging; Oklahoma Nitrogen Company; Pacific Gulf Oil Limited; Paloma Pipe Line Company; Panindustrial, S.A.; Peace Pipe Line, Ltd.; Pembroke Capital Company; Pembroke Cracking Company; Penrith Enterprises, Inc.; Permapint, S.A.; Petroleo Gulf de Brasil Limitada; Petroleos Gulf de Guatemala, S.A.; Petromont, Inc.; Petrosil Oil Company Limited; Plaschem International Company (Hong Kong) Limited; Plastigama, S.A.; Platte Pipeline Company; Pol Transport AB; Polyquimicos, S.A.; Produtos Quimicos Somox, Ltda.; Propet Company, Limited; Pyro Power Corporation; Raffinerie De

Cressier S.A.; Redwater Disposal Company Limited; Resinas Andinas S.A.; Restaurang Aktiebolaget Brahehus; Rimbey Pipe Line Co., Limited; Rio Blanco Oil Shale Partnership; Ripon Enterprises, Inc.; Sarni S.P.A.; Servico Limited; Silvertown Lubricants Limited; Solvent Refined Coal International, Inc.; Sorrento Electronics, Inc.; Spencer Quimica Mexicana, S.A. de C.V.; Stibium, Inc.; Sumatra Gulf Oil, Ltd.; Sunrise International Company Limited; Superior Propane Limited; Syensk Petroleum Administration A.B.; Svensk Petroleum Largring Tre A.B.; Svenska Aktiebolaget Alfred Olsen & Co.; Svenska Gulf Oil A.B.; Svenska Petroleum Forvalting A.B.; Syncrude Canada, Ltd.; Taita Chemical Corporation; Taiwan Plasticizer Corporation; Taiwan VCM Industries Corp.; The Trans Mountain Pipe Line Company; Trans-Northern Pipe Line Company; Tunisian Gulf Exploration and Production Company; Venezuela Gulf Refining Company; Veritas Oil Company Aktiebolag; Western G.M.C. Pontiac Buick Ltd.; West Texas Gulf Pipe Line Company.

TRAVELERS INSURANCE COMPANY SUBSIDIARIES AND AFFILIATES

Travelers Insurance Company lists the following subsidiaries and affiliates: Adria - TIC International Holdings, S.A.; Alt Management Corp.; American Liquid Trust; Ashland-Alaskan, Ltd.-(Okla.); Auger Insurance Agency, Inc.; Charles A. Boyer, Inc.; Brookview Village, Ltd.-(Ill.); C.S.I., Inc.; Caribbean Atlantic Life Insurance Company Limited; Caribbean Atlantic Life Insurance

Company of Jamaica Ltd.; Caribbean Atlantic Life Insurance Company Trinidad and Tobago; Carpenter Brothers Insurance Agency, Inc.; The Charter Oak Fire Insurance Company; The Connecticut Fire Insurance Company; William F. Connelly, Jr., Inc.; H. C. Copeland Administrative Services, Inc.; H. C. Copeland and Associates Equities, Inc.; H. C. Copeland and Associates, Inc.; Constitution Fund; The Constitution State Insurance Company; Constitution State Management Company; Constitution State Service Company; Cornutt & McIntire Insurance, Inc.; Dana Point Marina Company-(Cal.); Derby Advertising, Inc.; Dugdale of Nebraska, Inc.; 89th and York Avenue Corporation; Employee Retirement Income Systems Company; Exsure, Inc.; Fiduciary Investment Company, Inc.; 400 University Avenue Prospect Company-(Canada); Four S Corporation; The Arthur B. Fowler Agency, Inc.; Fund Administrators Inc.; Hilstead Insurance Agency, Inc.; Investment Companies Services Corporation; KCF Insurance Agency Inc.; Keystone Custodian Funds, Inc.; Keystone Custodian Funds Series S-1, S-3, S-4, K-1, K-2, B-1, B-2 and B-4; Keystone International Fund, Inc.; Keystone Investment Management Company, Inc.; Keystone Massachusetts Inc.; Keystone Massachusetts Life Insurance Company; Keystone Provident Life Insurance Company; Keystone Real Estate Company; Keystone Securities Co., Inc.; LA Metropole S.A.; The Massachusetts Companies, Inc.; The Massachusetts Company Distributor, Inc.; Massachusetts Fund; The Massachusetts Fund For Tax Exempt Income; Massco Investment Management Corporation; Master Reserves

Trust; Money Market/Option Investments, Inc.; Oak Creek Apartments-(Calif.); William F. O'Connor, Inc.; O'Hare Lake Office Plaza, Ltd.-(Ill.); Panther Valley Country Club, Inc.; Panther Valley Inc.; Panther Valley, Ltd.-(N.J.) and Subsidiaries; Panther Valley Service, Inc.; Park Newport Ltd.-(Calif.); Pequest Sewer Company; Pequest Water Company; The Phoenix Insurance Company; The Plaza Corporation (Formerly Constitution Plaza, Inc.); The Prospect Company; Prospect Management Services Company (Del.); E. Broox Randall & Sons, Inc.; Terra Nova Insurance Company Limited; TIC Auto Body Co., Inc.; TMC Insurance Agency, Inc.; Syd Tozier & Associates Insurance Brokers, Inc.; TRAVCAN Limited; Travelers American Properties (Five) N.V.; Travelers American Properties (Four) N.V.; Travelers American Properties (One) N.V.; Travelers American Properties (Six) N.V.; Travelers American Properties (Three) N.V.; Travelers American Properties (Two) N.V.; Travelers Asset Management International Corporation; Travelers Canada Corporation; The Travelers Corporation of Asia Limited; The Travelers Corporation of Bermuda Limited; Travelers Equities Fund, Inc.; Travelers Equities Sales, Inc.; The Travelers Equity Fund No. 100 (Canada); The Travelers Equity Fund No. 10 (Bermuda); The Travelers Fund A for Variable Annuities; The Travelers Fund A-1 for Variable Annuities; The Travelers Fund B for Variable Contracts; The Travelers Fund B-1 for Variable Contracts; Travelers General Agency of Hawaii, Inc.; Travelers General Agency of Puerto Rico, Inc.; The Travelers Indemnity Company; The Travelers Indemnity Company of America; Travelers In-

demnity Company of Canada; The Travelers Indemnity Company of Illinois; The Travelers Indemnity Company of Rhode Island; The Travelers Insurance Company of Illinois; Travelers Insurance Corporation Proprietary Limited; The Travelers Investment Management Company; The Travelers Life and Annuity Company; The Travelers Life Insurance Company; Travelers Life Insurance Company of Canada; The Travelers Life Insurance Company (Overseas) Ltd.; The Travelers Marine Corporation; The Travelers Massachusetts Option Income Trust; The Travelers Pension & Life Insurance Company; The Travelers Pooled Separate Account "A"; The Travelers Pooled Separate Account "B"; The Travelers Pooled Separate Account "C"; The Travelers Pooled Separate Account "D"; The Travelers Pooled Separate Account "M"; The Travelers Pooled Separate Account "N"; The Travelers Pooled Separate Account "R"; The Travelers Pooled Separate Account "S"; The Travelers Pooled Variable Annuity Fund "V" and "VI"; The Travelers Reinsurance Company of Bermuda, Limited; The Travelers Separate Account "K"; The Travelers Separate Accounts for particular employers-13 Different Accounts; The Travelers Syndicate #1, Inc.; Travelers U.S. Property Bermuda, Limited; Travelers Variable Annuity Account V-1; Tri County Grove-(Fla.); West Village-(Penn.); Wibesla, Inc.; Joseph A. Wynne Agency Yorba Linda Apartments Ltd.-(Calif.); Yorba Linda 1-(Calif.).

PHILIP E. HENDERSON
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Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that three copies of this Petition For Writ of Certiorari have been sent to each counsel of record for respondent by depositing same in the United States Mail, Postage prepaid, this 30th day of August, 1982.

I further certify that all parties required to be served have been served.

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